

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 559 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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CHANDRIKABEN MAHASUKHLAL MEHTA

Versus

UMIYASHANKAR VANECHAND MEHTA  
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Appearance:

MR YOGESH S LAKHANI for Petitioners

MR P C Kavina for Mr NAVIN K PAHWA for Respondent No. 1  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/03/2000

ORAL JUDGEMENT

This is a Civil Revision Application filed under Section 115 of the Code of Civil Procedure, 1908, challenging the order dated 6.3.1999 recorded by the learned Civil Judge (SD), Morbi below application Exh.56 in Civil Misc.Application No.66/93 under which the learned trial Judge rejected the application of the present petitioner for deleting certain parts of the objections filed by the present respondent in the above

matter. It appears that before the trial court, the petitioner submitted application for succession certificate in respect of the properties left behind him by deceased Mahasukhlal who happened to be the husband of the first petitioner and father of petitioners No.2 and 3. It is reported that the deceased died at Morbi on 10.3.1993 leaving behind him the aforesaid heirs who are shown as petitioners and are the applicants before the trial court. The petitioners also contended that the petitioners had 27 shares of Bajaj Auto Ltd. in his name at the time of his death and the petitioners have applied for succession certificate in respect of those shares.

2. When the notices were issued, the present respondent, being brother of the deceased filed objections and certain contentions have been raised in the said objections. The main contentions are that the deceased and the respondents were together in the past and the said shares were purchased by the respondent in 1962 in the name of the deceased on the grounds mentioned in the objections.

3. The petitioners submitted the aforesaid application Exh.56 before the trial court stating that the contentions raised by the respondent in para 5 to 9 of the said objections be deleted in accordance with the provisions contained in Order 6 Rule 16 of the Code of Civil Procedure (for short, 'the Code'). After hearing the parties, the learned trial Judge dismissed the said application.

4. Feeling aggrieved by the said order the petitioners preferred this Revision Application. It has been mainly contended here that the trial court while dealing with the application for succession certificate of the petitioners, should have considered the fact that it had a very limited power, scope and jurisdiction. That the contentions raised by the objector in the objections could not be entertained in the aforesaid Civil Misc. Application and, therefore, the said contentions may be deleted from the pleadings in accordance with the provisions contained in Order 6 Rule 16 of the Code.

4. I have heard the learned Advocates for the parties and have perused the papers. Let us take that the Court below could not deal with the subject matter of the objection that the shares were purchased by the respondent in the name of the deceased and yet they continued to be in the name of the deceased. In that case, the petitioners could take up that plea before the

trial court and make submission that the objectors could not raise the plea before the trial court. The petitioners could also plead before the trial court that no issue may be framed and the aforesaid contentions of the objectors in the objections may be overlooked or ignored. Instead of doing so, the petitioners have prayed for deleting the aforesaid contentions in the objections. So far as the pleadings are concerned, it is no doubt true that the Court has power to delete any part of the pleadings in accordance with Order 6 Rule 16 of the CPC and this provision has been referred to in the order of the trial court also. The said provisions make it clear that any part of the pleadings can be struck off provided the said part is found to be unnecessary, scandalous and frivolous or vexatious. The petitioners have not stated in their application Exh.56 that the aforesaid contentions and objections are unnecessary, scandalous and frivolous or vexatious. Another ground on which the part of the pleadings which could be deleted is that the pleadings may tend to prejudice, embarrass or delay the fair trial of the suit. The petitioners have also not mentioned in the application that these contentions would not fall within four corners of sub-rule (b). The third is that the pleadings could be deleted when it is found that it is otherwise an abuse of the process of the court. This was also not the case of the petitioners before the trial court. In that view of the matter it can be said that the case of the petitioner that their application, if read as a whole, does not fall within four corners of Order 6 Rule 16 of the Code. It is to be considered that so far the power of the Court is concerned, it is no doubt very limited and the Court can grant succession certificate even on prima facie proving the case. It is also not in dispute that the court should conduct summary enquiry in order to find out whether the petitioners are entitled succession certificate. Learned Advocate for the petitioners has also referred to observations that the decision of the Court under this section on summary enquiry does not in any way take away the right of the parties, nor does it establish right of the parties if the certificate is granted. There is no dispute about the same but it is a summary enquiry and ultimately, the rights are not decided finally by the Court granting succession certificate. Therefore, if the succession certificate is granted in favour of the petitioner, the objector may be at liberty to move for appropriate proceedings before the appropriate court. On the other hand, learned Advocate for the respondent has also argued that the respondent can pray for succession certificate in his name. The respondent has not prayed before the trial court that the

succession certificate may be issued in his name. The point is that so far as the trial court is concerned, naturally, the powers are limited and the petitioners can make appropriate submissions before the trial court that the objections raised by the respondent cannot be considered for the purpose deciding the issue as to whether or not the petitioners are entitled to succession certificate. If such issues are raised, the trial court will meet with the issues in accordance with law. However, when the application does not fall within four corners of Order 6 Rule 16 of the Code, it will not be open for the trial court to interfere with the issue. So far as the pleadings are concerned, in rare case, the Court should interfere with the pleadings of the parties.

5. Learned Advocate for the petitioner has referred to a decision in the case of Gujarat Sachivalaya & Other Allied Office Staff Association, Gandhinagar v. State of Gujarat & anr., reported in 1989 (2) GLR 898. There it has been observed that the Court has, besides Order 6 Rule 16, an inherent power to strike off irrelevant and unnecessary pleadings. There is no dispute with respect to power of the Court under Order 6 Rule 16 but the position remains that the prayer must fall within four corners of the said rule. Moreover, when the trial court has exercised jurisdiction in not deleting the substantial part of the objections, then, this Court would be slow in interfering with the said discretionary powers of the trial court.

6. Learned Advocate for the respondent has referred to a decision in the case of V Bhagat vs. Mrs D Bhagat, 1987 (Supp.) SCC 318. There in a divorce petition by the husband, ground of adultery, cruelty and desertion, certain pleadings were found and they were struck down and ultimately, the Hon'ble Apex Court found that the Supreme Court in appeal, would not analyse the pleadings to find out which portion to be kept and which portion to be deleted as that would be unnecessary as well as prejudicial and accordingly all paragraphs in the plaint were directed to be deleted.

7. The said decision is on a little different footing. But the Court should be cautious in allowing an application for deleting a part of the pleadings of the other side. It is not apparent on the face of the record the trial court has committed jurisdictional error and consequently in the facts and circumstances of the case, this is a fit case wherein interference of this Court is called for. The CRA is accordingly dismissed. Rule discharged. Looking to the facts and circumstances of

the case, there shall be no order as to costs.

It is made clear that the trial court will not be influenced by the observations made in this order and will decide the matter on merits.

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msp.